

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 62 of 1978

in

COMPANY PETITION No 7 of 1976

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

O.L.OF PATIDAR BENEFIT P.LTD.

Versus

CHANDRAKANT D. THAKKER

Appearance:

MR DS NANAVATI for Petitioner

MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 19/01/98

ORAL JUDGEMENT

This application is filed by the Official Liquidator in Company Petition No. 7 of 1976. The Company Petition no. 7/76 was filed against the company Patidar Benefit Pvt. ltd. under section 433 of the

Companies Act, 1956 for winding up of the said company. This court by its order dated 4th April, 1976 has passed the order under sec. 433 of the Act and the said company has been wound up and the Official Liquidator attached to this Court was appointed as Official Liquidator of the winding up company.

2. The Official Liquidator has filed this application under sec. 446(2) of Companies Act, seeking an order cum decree against the respondent. It is the claim of the Official Liquidator that by application dated 8.10.1971 the respondent no. 1 had sought loan of Rs 6000/ and by another application dated 19.8.1972 has sought further loan of Rs 16,000/ and that those loans were sanctioned and paid to him and he was to return the said loan with interest at the rate of 15% per annum. It is further the claim of the Official Liquidator that by letter dated 10th September, 1976, he called upon the respondent no. 1 to repay the said amount and as he failed to pay the same, the present application is filed in which an order cum decree for total amount of Rs 30,567-50ps is sought.

3. The respondent no. 1 has contested the claim of the Official Liquidator by filing written statement. The first contention raised by the respondent is that the claim to get the money decree was barred by the law of limitation and consequently on that ground alone, the application deserves to be rejected. It is contended that when the claim to get back the amount of loan was barred by law of limitation even prior to the date of issuing notice by the Official Liquidator, the present application could not be entertained. It is further contended by him that the loan amount of Rs. 6000/ was paid to his son Kamal Thakkar and at the time of the said transaction, he was minor and that he is not concerned with the said loan as the said transaction was entered into by the wound up company with the minor. The said transaction is illegal and no liability could be fastened on the same. He further raised the some contention as regards the claim for the amount of Rs 16,000/. Thus, he contended that he was not a party to any loan transaction with the wound up company and in these circumstances, he is not liable to pay any amount.

4. The matter came up for final hearing today. The Official Liquidator has not produced any documents in support of his claim in this application, therefore, I have to proceed with the matter on the basis of the averments made in the application.

5. As per the averments made by the Official Liquidator in the application, it is quite clear that the first loan of Rs 6000/ was paid on 8.10.1971, whereas the second loan was paid on 19.8.1972. The original company petition being Company Petition No. 7/1976, in which the order of winding up of the company is passed. From the record of this proceedings, it is not possible to know the exact date of the filing of the said company petition no. 7/76, but any way, even assuming in favour of the applicant, it could be held at the most that the said company petition was filed in the first week of January, 1976. But when the said company petition was filed the claims for getting back loan advanced by the company were barred by the law of limitation. More than three years had elapsed since the date of the advancing of the loan by the original company, when the original company Petition No. 7/76 was filed. It is settled law that even a petition for winding up of a company could not be filed on the basis of a debt which is become barred by law of limitation. Therefore, when the original loan had become time barred when the original petition for winding up was filed giving all benefit of the period from the date of the filing of the petition till the date of the passing of the order of winding up to the present applicant will be of no benefit. If the provisions of section 458A are taken into consideration, then besides, giving the benefit of period running between the date of the presentation of winding up petition and the date of the passing of the order of winding up of the company, an additional one year could be granted for counting the period of limitation. The order of winding up has been passed on 4th April, 1976 and this application is filed by the Official Liquidator on 15th March, 1978. Thus, Official Liquidator has not filed this application within the period of one year from the date of passing of the order of winding up for getting the benefit of the provisions of sec. 458A of the Companies Act.

6. Therefore, in view of all the above considerations, even giving all the benefits of counting the period of limitation in favour of the Official Liquidator, it is quite obvious that on the date when this application was filed, the claim for getting the order cum decree could not be entertained as the same was already barred by the law of limitation and, therefore, on this count alone, the present application deserves to be rejected. The said claim is barred by the law of limitation as provided by Art. 137 of the Limitation Act, 1963. I am supported to this view of mine by the decision of the Full Bench of Delhi High Court in the case of R.C. Abrol & Co. (P.) Ltd. vs. A.R. Chadha &

Co., 49, Company Cases, 77 and the judgment of the Single Judge of Chit Fund (P.) Ltd. vs. Gian Chand & Others., 44, Company Chit Fund (P.) Ltd. vs. Gian Chand & Others., 44, Company Cases, 329. Thus, this application stands rejected, but in the circumstances of the case, no order as to costs.
